

merger, covering details of the bankers' participation. Mr. Undermyer has charged that the agreement was suppressed when the deal was made public last Thursday evening. This agreement follows:

"The following tentative financial plan is approved in connection with the proposed acquisition of Midvale Steel and Ordnance Company, under that or some other name, of the assets and properties of the Inland Steel Company, and Republic Iron and Steel Company, as set forth in the attached memorandum. It is proposed that the bankers are to organize a syndicate or syndicates with the cash application of \$4,000,000. The syndicate is to acquire with the Midvale Company that after the merger thereof of the Inland Company and accession of the Republic Iron and Steel Company's properties it will purchase \$25,000,000, 475 par value, of preferred stock and \$50,000,000 of common stock without par value of said Midvale Company for \$44,000,000. The cash application of \$4,000,000 is to be used for the cash payment of \$24,000,000 to Inland stockholders and to provide additional cash working capital for Midvale Company. The syndicate is also to provide up to \$20,000,000 cash to be used in the discretion of the syndicate managers in the purchase of additional shares of stock of said Midvale Company from the company or otherwise. As managers of the foregoing syndicate or syndicates the bankers shall have the right to charge a commission as managers not to exceed 15 per cent of the profits thereof. Fifty-nine thousand five hundred additional shares of Midvale Company stock shall be sold to the bankers at the price of \$10 per share in order to assure to them a substantial interest in the said Midvale Company. The 25,000 shares of said common stock shall be sold at the same price to Thomas L. Chadbourne, who has directed negotiations of the plan and has signed the attached memorandum."

Trusts Public to Make Market.

Mr. Schiff explained that the bankers were to get 15 per cent commission on the profits of the syndicate, and management, but added that if the syndicate did not make any money there would be no profit for the syndicate.

"I expect to underwrite it all?" asked Mr. Undermyer.

"Yes," replied Mr. Schiff.

"You expect to market it in the open market?"

"Yes," replied Mr. Schiff.

"In order to market it in the open market, the vendors agree to hold the stock for a given time?"

"No," replied Mr. Schiff.

"So the vendors may sell their stock upon the market that you are making for this stock?"

"I am not making any market."

"Who is going to make the market?"

"I trust the public will have sufficient confidence in this thing, as we have, to buy the stock."

"Mr. Schiff, do you mean to have the Committee understand that this syndicate does not propose to do anything toward making the market?"

"I do not understand what you mean by 'making a market'."

"You do not know how many years have you been in the street?"

"About thirty."

"How many pools have you been associated with?"

"None whatsoever, Mr. Undermyer."

"Never Has Operated Pools."

"And you don't know anything about making a market in stock, do you?"

"I heard of it, but you apparently are better informed on it than I am."

"You have no part in any syndicate operations, have you?"

"I have been a party to a good many syndicates."

"And these syndicates have a manager, have they?"

"Yes."

"Generally banking houses?"

"Yes."

"And this manager operates that pool, buying and selling stock on the market?"

"I have never operated a pool, so I cannot answer that."

"You say you do not know that they buy and sell stocks on the market, these syndicate managers?"

"I know from my own knowledge, because we do not operate pools."

"Very well, we will see. So that this 15 per cent of the profits that you get, you are to get for doing what?"

"For selling the stock for our services."

"Selling the stock how? On the market?"

"On the market, or by issue or by private treaty."

"Are you intending to make a public issue?"

"We may."

"But you are intending to do so?"

"I have no intention at the moment at all. The syndicate has not yet been formed."

"If the stock is not sold by public issue, then it is to be sold on the market, isn't it?"

"Presumably."

"And for that purpose you employ brokers?"

"Yes."

Wash Sale Idea Resented.

"And in the operation of this syndicate you are giving only selling orders and no buying orders?"

"Not necessarily. I am giving selling orders."

"You are going to give selling orders and buying orders?"

"No, we give buying orders for stock which we wish to acquire."

"And selling orders for stock you wish to sell?"

"Exactly."

"And you are going to buy and sell the same stock?"

"How do you mean I am going to buy and sell the same stock?"

This passage marked the first of the open talks between Mr. Schiff and Mr. Undermyer. The banker made it clear that he resented the lawyer's imputation that Kuhn, Loeb & Co. were engaging in wash sales to create a market under which they might dispose of their \$5,000,000 bonus shares at whatever price the market reached. Mr. Schiff continued:

"I resent the statement of Mr. Undermyer to Mr. Schiff, and I object to it and want the objection recorded."

Mr. Undermyer: "Well, Mr. Schiff, you may do as you please about that."

The lawyer repeated his question:

"No idea of Manipulation."

"Are you proposing to market this stock, are you not, by buying and selling the stock?"

"No."

"You are not proposing to buy any of them?"

"We may buy some."

"And you may sell some of the same kind of stock?"

"Exactly."

"And that you don't call trading in the stock?"

"No."

"If your syndicate is organized for the purpose of marketing this stock and selling it as so to get the cash, why should you want to buy the stock that you are selling?"

"Because there come times where the stock is pressing on the market, when people want to sell, and somebody wants to buy it, and we are quite ready to do so."

"That is in order to maintain prices so that you can market this stock for the syndicate?"

"It is in order to make a market for the stock who wish to dispose of their stock at the price we believe is below its value."

"Then you sell it again, the stock that you buy?"

"At a proper price we would have it for sale."

"That is what I meant, Mr. Schiff, by trading in this stock by a pool, manipulation of the stock?"

"I object to the term 'manipulation.'"

"One moment, you do not regard that as pool manipulation, do you?"

"I do not know what you mean by pool manipulation, that is what you call pool manipulation, because you know perfectly well it is not."

"Or for the purpose of marketing large blocks of stock?"

"There is no manipulation whatsoever."

"You know how large blocks of stocks are marketed by syndicates, do you not?"

"I do."

Replies on His Firm's Record.

"They are marketed through a broker or a banking house or a series of brokers buying and selling stock until they have exhausted the syndicate dealings or until the syndicate has expired, and they distribute what stock has remained."

"That is not our experience."

"What is your experience?"

"Our experience is that the public, rightly or wrongly, has apparently considerable confidence in our record and our knowledge and our judgment, and that if we buy something, be it bonds or be it shares, and put a price upon it, the public as a rule is ready to buy it because they think they are making a wise purchase."

"That has been the reputation of your house."

"Nobody is questioning the reputation of your house."

"You apparently are."

"You are mistaken. I am trying to get the facts. I ask you whether this was or was not the method—"

"You made the statement—"

"I don't care to have any controversy or misunderstanding with you, Mr. Schiff. I would like you to answer my question. But I would like to say to you that nobody is questioning the integrity of the syndicate or your firm. We are questioning methods, prevailing methods of disposing of security. In order that the syndicate shall come out even that we should be ready to buy it at a price here at least \$43 a share for this common stock?"

"Assuming they get substantially 90 for the preferred?"

"Syndicate Gets Extra Profit."

"And then when the profits are ascertained over and above \$43 per share for this stock, how much of that goes to the syndicate, covering over 15?"

"Eighty-five per cent to the syndicate and 15 per cent to ourselves for managing it."

"Managing the syndicate, you mean marketing the stock in the way you have described, do you?"

"Yes."

"That is your present impression?"

"In a general way I should say that would be the result."

"And any profits that are realized on trading in the stock, that is, buying it at one price and selling it at another that becomes part of the syndicate profit?"

"All goes into the syndicate."

"Does No Trading Business."

"I ask you how many shares you expect to trade in, to buy and sell back and forth, in order to market 505,000 shares?"

trading in this stock by a pool, manipulation of the stock?"

"I object to the term 'manipulation.'"

"One moment, you do not regard that as pool manipulation, do you?"

"I do not know what you mean by pool manipulation, that is what you call pool manipulation, because you know perfectly well it is not."

"Or for the purpose of marketing large blocks of stock?"

"There is no manipulation whatsoever."

"You know how large blocks of stocks are marketed by syndicates, do you not?"

"I do."

Replies on His Firm's Record.

"They are marketed through a broker or a banking house or a series of brokers buying and selling stock until they have exhausted the syndicate dealings or until the syndicate has expired, and they distribute what stock has remained."

"That is not our experience."

"What is your experience?"

"Our experience is that the public, rightly or wrongly, has apparently considerable confidence in our record and our knowledge and our judgment, and that if we buy something, be it bonds or be it shares, and put a price upon it, the public as a rule is ready to buy it because they think they are making a wise purchase."

"That has been the reputation of your house."

"Nobody is questioning the reputation of your house."

"You apparently are."

"You are mistaken. I am trying to get the facts. I ask you whether this was or was not the method—"

"You made the statement—"

"I don't care to have any controversy or misunderstanding with you, Mr. Schiff. I would like you to answer my question. But I would like to say to you that nobody is questioning the integrity of the syndicate or your firm. We are questioning methods, prevailing methods of disposing of security. In order that the syndicate shall come out even that we should be ready to buy it at a price here at least \$43 a share for this common stock?"

"Assuming they get substantially 90 for the preferred?"

"Syndicate Gets Extra Profit."

"And then when the profits are ascertained over and above \$43 per share for this stock, how much of that goes to the syndicate, covering over 15?"

"Eighty-five per cent to the syndicate and 15 per cent to ourselves for managing it."

"Managing the syndicate, you mean marketing the stock in the way you have described, do you?"

"Yes."

"That is your present impression?"

"In a general way I should say that would be the result."

"And any profits that are realized on trading in the stock, that is, buying it at one price and selling it at another that becomes part of the syndicate profit?"

"All goes into the syndicate."

"Does No Trading Business."

"I ask you how many shares you expect to trade in, to buy and sell back and forth, in order to market 505,000 shares?"

"I do not trade back and forth."

"How many shares do you expect to have to trade in?"

"I have no idea."

"You cannot tell?"

"I do not know the market."

"It depends upon the avidity of the investor?"

"It depends upon the number of existing shareholders of the three companies involved who may want to cash in on their investment."

"It also depends upon how much of the stock you have to sell, the public is willing to take."

"To a certain extent."

"You know, do you not, that this stock was dealt in yesterday on the Curb, when issued?"

"Yes."

"Do you know what brokers traded in that stock yesterday on the Curb?"

"I don't know."

"These transactions of yours will be on the Curb, won't they?"

"Not necessarily; they will probably be on the Stock Exchange."

"Don't you know that this stock is going to be traded in before the stock can be listed on the Stock Exchange?"

"No, the stock will probably be issued on a 'when issued' basis on the Stock Exchange at the time we form our syndicate."

"You expect to issue it then, that will be within how long?"

"Within a week or two."

"And within that time you expect to have all the statements that are necessary for the listing on the Stock Exchange?"

"For the listing 'when issued.'"

"You have to give all the particulars?"

"No; they do not require a very full statement for issue on the 'when issued' basis."

Refuses to Name Combinations.

Mr. Undermyer explained to the witness again the committee interest in the proposed merger as affecting housing and the structural steel market and endeavored to draw from him the names of other companies that may be under consideration by the bankers in possible combinations. Mr. Schiff refused to name them on the ground that the discussions were in such a state that they might never be taken up seriously.

Mr. Undermyer did not press this line of inquiry, but Mr. Schiff's resentment of the questions began to rise from this point. Mr. Undermyer asked:

"Now in addition to this 15 per cent, Mr. Schiff, that you are to get from any profits of the syndicate in connection with the marketing of this stock, I am going to ask you, how many shares of the stock you mean I am going to get 15,000 shares of the stock?"

"At \$40 a share."

"What are you going to do for it?"

"We are taking the responsibility toward the public of fathering financially this concern. We propose to take a continuing interest in it the way we do with other large corporations with which we are connected."

"You mean you get this \$2,000,000, or whatever more you may get out of the stock, for the moral responsibility that your firm assumes in fathering this as the bankers for the new company, is that it?"

"No, I do not mean that."

"That is one of the things."

"Possibly."

"Isn't that really the main item?"

"No. They want a strong financial interest standing by this concern."

"To what?"

"At all times to give it financial advice and to give it, if necessary, financial backing, and we are only willing to do that if we have a strong financial and continuing interest in the concern."

"\$33 a Share No Gift."

"I thought it was costing you the financial interest, the moral responsibility and the watchful eye?"

"If they think it advisable for us to have a financial interest, and are ready to sell us 50,000 shares at \$10 a share."

"Which you can sell at \$43 on the market, is that right?"

"Yes."

"So that that is really a present, gift or compensation?"

"No, it is not."

"Not a gift, it is compensation?"

"No, it is not."

"It is not compensation?"

"No."

"Well, what does the other \$33 represent?"

"It does not represent a thing to begin with until it is cashed."

"And before you strike to do anything with respect to marketing the \$33, you sell it again, the stock that you buy?"

"At a proper price we would have it for sale."

"That is what I meant, Mr. Schiff, by trading in this stock by a pool, manipulation of the stock?"

"I object to the term 'manipulation.'"

"One moment, you do not regard that as pool manipulation, do you?"

"I do not know what you mean by pool manipulation, that is what you call pool manipulation, because you know perfectly well it is not."

"Or for the purpose of marketing large blocks of stock?"

"There is no manipulation whatsoever."

"You know how large blocks of stocks are marketed by syndicates, do you not?"

"I do."

Replies on His Firm's Record.

"They are marketed through a broker or a banking house or a series of brokers buying and selling stock until they have exhausted the syndicate dealings or until the syndicate has expired, and they distribute what stock has remained."

"That is not our experience."

"What is your experience?"

"Our experience is that the public, rightly or wrongly, has apparently considerable confidence in our record and our knowledge and our judgment, and that if we buy something, be it bonds or be it shares, and put a price upon it, the public as a rule is ready to buy it because they think they are making a wise purchase."

"That has been the reputation of your house."

"Nobody is questioning the reputation of your house."

"You apparently are."

"You are mistaken. I am trying to get the facts. I ask you whether this was or was not the method—"

"You made the statement—"

"I don't care to have any controversy or misunderstanding with you, Mr. Schiff. I would like you to answer my question. But I would like to say to you that nobody is questioning the integrity of the syndicate or your firm. We are questioning methods, prevailing methods of disposing of security. In order that the syndicate shall come out even that we should be ready to buy it at a price here at least \$43 a share for this common stock?"

"Assuming they get substantially 90 for the preferred?"

"Syndicate Gets Extra Profit."

"And then when the profits are ascertained over and above \$43 per share for this stock, how much of that goes to the syndicate, covering over 15?"

"Eighty-five per cent to the syndicate and 15 per cent to ourselves for managing it."

"Managing the syndicate, you mean marketing the stock in the way you have described, do you?"

"Yes."

"That is your present impression?"

"In a general way I should say that would be the result."

"And any profits that are realized on trading in the stock, that is, buying it at one price and selling it at another that becomes part of the syndicate profit?"

"All goes into the syndicate."

"Does No Trading Business."

"I ask you how many shares you expect to trade in, to buy and sell back and forth, in order to market 505,000 shares?"

"I do not trade back and forth."

"How many shares do you expect to have to trade in?"

"I have no idea."

"You cannot tell?"

"I do not know the market."

"It depends upon the avidity of the investor?"

"It depends upon the number of existing shareholders of the three companies involved who may want to cash in on their investment."

"It also depends upon how much of the stock you have to sell, the public is willing to take."

"To a certain extent."

"You know, do you not, that this stock was dealt in yesterday on the Curb, when issued?"

"Yes."

"Do you know what brokers traded in that stock yesterday on the Curb?"

"I don't know."

"These transactions of yours will be on the Curb, won't they?"

"Not necessarily; they will probably be on the Stock Exchange."

"Don't you know that this stock is going to be traded in before the stock can be listed on the Stock Exchange?"

"No, the stock will probably be issued on a 'when issued' basis on the Stock Exchange at the time we form our syndicate."

"You expect to issue it then, that will be within how long?"

"Within a week or two."

"And within that time you expect to have all the statements that are necessary for the listing on the Stock Exchange?"

"For the listing 'when issued.'"

000 shares you have underwriters who will take it off your hands?"

"Yes."

"And they are men in the banking world and the mercantile world?"

"Largely people throughout the country."

"Men who underwrite your enterprises?"

"And on your assurance that that is a good thing they take it?"

"They know we would not put our name to it otherwise."

"What your company says that it is a good thing they take it?"

"There is no assurance given. The fact